

## REMARKS

Claims 1-27 are currently pending in the application. Claims 1, 12, 22, 24, and 26 are independent claims and claims 2-11, 13-21, 23, 25, and 27, respectively, depend from the independent claims. Claims 22, 24, and 26 have been amended. The Applicants request reconsideration of the claims in light of the following remarks.

Claims 22, 24, and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Berland US Patent 4,142,072 "Berland". According to the Office Action, Berland discloses all the features set forth in Applicants' independent claims 22, 24, and 26. Applicants respectfully traverse the rejections, but have amended claims 22, 24, and 26. The Applicants respectfully submit that claims 22, 24, and 26, as amended, are different from the cited reference for at least the following reason.

Applicants respectfully submit that with regard to claims 22, 24 and 26, as amended, Berland at least fails to disclose a method of electrically sensing that a sound inlet tube is plugged or unplugged, and selecting an output based upon the electrical sensing.

The Office Action asserts that Berland discloses in Fig. 3 sensing (by sound pressure) that an inlet tube is either plugged or unplugged. The Applicants respectfully traverse the Office Action's characterization of Berland. However, the Applicants respectfully assert that sensing (by sound pressure), as alleged in the Office Action, is different from electrically sensing, as set forth in claims 22, 24, and 26, as amended.

The Applicants respectfully point to the analysis of Berland set forth below in the previous response. Applicants respectfully assert that Berland fails to disclose every feature set forth in Applicants' independent claims 22, 24, and 26, as amended. Because Berland is at least different from the Applicants' claimed invention for the reasons set forth above, the Applicants respectfully submit that claims 22, 24, and 26, are allowable over the cited reference. The Applicants request that the rejection of claims 22, 24, and 26 over Berland be withdrawn.

Claims 1-4, 7, 9-14, 17, 19-21, 23, 25, and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berland in view of Ruegg US Patent 3,875,349 (Ruegg). The Applicants respectfully disagree and traverse the rejections as follows.

According to the Office Action, Berland teaches an actuator switch being movable between a first position in which the rear inlet tube is plugged and a second position in which the rear inlet tube is unplugged. However, according to the Office Action, Berland does not disclose a circuitry for sensing whether the actuator switch is in the first position or the second position in which a tube is closed and open, respectively, and for selecting an output based upon the position sensed and the tube being open or closed.

Further, the Office Action asserts that Ruegg teaches a circuitry for sensing whether an actuator switch is in the first position or the second position, and for selecting an output based upon the position sensed. The Applicants respectfully traverse the characterization of the cited references.

Additionally, the Office Action sets forth that it would have been obvious to combine the teachings of Ruegg and Berland to provide a microphone system possessing a first microphone having a spherical sensitivity and a second microphone having directional sensitivity, and wherein an amplifier can be selectively switched to either one or both microphones. The Applicants respectfully disagree as follows.

Applicants respectfully submit regarding independent claims 1 and 12, that Berland fails to at least disclose circuitry in general, and in particular, circuitry for sensing whether an actuator is in a first position or a second position in which a tube is closed and open, respectively, and circuitry for selecting an output based upon the position of the actuator switch sensed by the circuitry for sensing the position of the actuator switch.

Instead, Berland discloses a directional/omnidirectional hearing aid microphone having a slide (1) that is adapted to be moved between a first position and a second position as shown in Figures 1, 2, and 5. However, as set forth in the Office Action, Berland does not disclose a circuitry for sensing whether the actuator switch is in the first position or the second position in which a tube is closed and open, respectively, and for selecting an output based upon the position sensed.

Ruegg discloses a hearing aid having a first microphone with spherical shaped sensitivity and a second microphone with directional sensitivity (11 and 12, in Figs. 1-4 , respectively).

Ruegg discloses an electrical reversing switch 22 and a movable electric contact 17 in Figure 5. The microphone is electrically coupled via a conductor 13 with one fixed electric contact 16 of the reversing switch 22. The movable contact 17 of the reversing switch 22 is also connected through electrical conductor 18 with amplifier 19 (col. 3, lines 1-7). The Applicants respectfully submit that Ruegg merely teaches an electric switch.

The Office Action sets forth that it would have been obvious to combine the teachings of Ruegg and Berland to provide a microphone system possessing a first microphone having a spherical sensitivity and a second microphone having directional sensitivity, and wherein an amplifier can be selectively switched to either one or both microphones. The Applicants respectfully disagree.

The Office Action suggests that the slide (1) of Berland is an actuator switch and that movable contact (17) of Ruegg is an actuator switch. However, the movable contact of Ruegg is not the same as the slide of Berland. The movable contact (17) of Ruegg is incapable of performing the function of plugging a hole. The slide of Berland is movable between a first position and a second position in which a tube is closed and opened, respectively (Figure 5). The movable contact of Ruegg is movable between fixed electrical contacts 15 and 16 to provide power to one or the other of two microphones 11 and 12, respectively (Figures 1, 2, and 5). The movable contact (17) is neither taught nor suggested as being usable for plugging a hole, and there is no teaching in Ruegg suggesting that a hole should be plugged.

Further, Ruegg does not disclose sensing whether an actuator switch is in a first position wherein a rear inlet tube is plugged or a second position wherein the rear inlet tube is unplugged, as recited in the Applicants' claims. Instead, Ruegg teaches a reversing switch 22 for alternatively conducting electricity from one or the other of microphones 11 and 12.

Additionally, Ruegg discloses a microphone housing having openings 34 and 37 in Figure 5. Ruegg does not teach plugging or closing either openings with an actuator switch or with the movable contact (17). Further, it would not be obvious to plug either of the openings because the microphones 11 and 12 are in separate chambers, 29 and 30, respectively, and separated by partition wall 28, as illustrated in Figure 5, and are activated electrically, and not mechanically.

Regarding Berland, the cited reference discloses in col. 2, lines 24-26 that Fig. 3 merely illustrates a simplified acoustic equivalence diagram for a hearing aid with a slide closing a rear opening. Berland does not teach or suggest being modified by the addition of any electrical sensing device or circuitry for sensing and selecting based upon the sensing. Berland fails to disclose selecting an output of any kind, and Ruegg fails to suggest sensing whether an actuator switch is in a first position wherein a rear inlet tube is plugged or a second position wherein the rear inlet tube is unplugged.

The Applicants respectfully submit that the proposed combination fails to disclose every feature of Applicants claimed invention at least because Ruegg does not teach an actuator switch and circuitry for sensing whether an actuator is in a first position wherein a rear inlet tube is plugged or a second position wherein the rear inlet tube is unplugged, as recited in the Applicants' claims. Thus, the proposed combination fails to teach or suggest the Applicants' claimed invention.

The Applicants also respectfully submit that neither of the cited references provide a suggestion or motivation to combine the references' teachings. First, Berland fails to suggest being modified to incorporate sensing circuitry. Second, Ruegg fails to suggest an actuator switch, as set forth in the Applicants' claims, but instead teaches an electrical switch having a movable contact. And third, Ruegg does not teach an actuator switch and circuitry for sensing whether an actuator is in a first position wherein a rear inlet tube is plugged or a second position wherein the rear inlet tube is unplugged. The cited references, alone or in combination, also fail to provide any motivation for the proposed combination.

The Applicants respectfully submit that the proposed combination of Berland and Ruegg, does not have a reasonable expectation for success. The Applicants respectfully submit that replacing the actuator switch of Berland with the reversing switch of Ruegg would destroy the Berland device because the movable contact cannot plug an inlet tube. Additionally, replacing the reversing switch of Ruegg with the actuator switch of Berland would destroy the Ruegg device because the slide of Berland cannot perform the electrical function of conducting electricity via the two fixed contacts. The Applicants respectfully submit that additional inventing, significantly beyond the scope of the references' teachings, would be required to

attempt to arrive anywhere near the Applicants' claimed invention, however the end result would still be failure.

For the reasons set forth above, the Applicants respectfully assert that the Office Action has failed to establish a *prima facie* case of obviousness. First, the cited references fail to disclose each and every feature of the Applicants' claimed invention. Second, the Office Action has failed to disclose, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, a suggestion or motivation to combine the two references. Finally, the Applicants respectfully submit that the proposed combination set forth in the Office Action has no reasonable expectation of success, but rather would result in destruction of both inventions disclosed in the cited references. Therefore, for at least the reasons set forth above, the Applicants respectfully submit that the Office Action has failed to establish a *prima facie* case of obviousness. Therefore, the rejections should be withdrawn, and the claims passed to issue.

For at least the reasons set forth above, Applicants assert that Berland and Ruegg, even if combined, fail to disclose every feature set forth in Applicants' independent claims 1 and 12, thus claims 1 and 12 are allowable over the cited reference. Applicants request that the rejection of claims 1 and 12 be withdrawn.

Applicants respectfully submit that in light of amendments and arguments provided above with respect to the rejection of independent claims 22, 24, and 26 over Berland, that rejection of dependent claims 23, 25, and 27 over the proposed combination of Berland and Ruegg is now moot. Therefore, dependent claims 23, 25, and 27 are also allowable over the cited references. Applicants respectfully request that the rejection of claims 23, 25, and 27 be withdrawn.

Applicants further submit that in light of the arguments provided above with respect to the rejection of independent claims 1 and 12, that the rejection of dependent claims 2-4, 7, 9-11, 13, 14, 17, and 19-21 over the proposed combination of Berland and Ruegg is now moot, thus dependent claims 2-4, 7, 9-11, 13, 14, 17, and 19-21 are also allowable over the cited references. Applicants request that the rejection of claims 2-4, 7, 9-11, 13, 14, 17, and 19-21 be withdrawn.

Dependent claims 5, 6, 8, 15, 16, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berland, Ruegg, and further in view of Killion, US Patent 6,101,259, "Killion". Applicants respectfully traverse the rejections as follows.

Killion fails to remedy the deficiencies of the proposed combination Berland and Ruegg. Killion at least fails to disclose an actuator switch and circuitry for sensing whether an actuator is in a first position wherein a rear inlet tube is plugged or a second position wherein the rear inlet tube is unplugged.

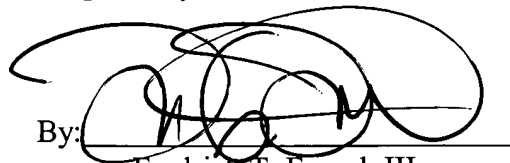
Applicants submit that in light of the arguments provided above with respect to the rejection of independent claims 1 and 12, that the rejection of dependent claims 5, 6, 8, 15, 16, and 18 over the proposed combination of Berland, Ruegg, and Killion is now moot, thus dependent claims 5, 6, 8, 15, 16, and 18 are also allowable over the cited references. Applicants request that the rejection of claims 5, 6, 8, 15, 16, and 18 be withdrawn.

### CONCLUSION

Applicants submit that based at least upon the foregoing, all pending claims are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, Applicants invite the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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